

innocence in 29, or 78%, of those cases. Incredibly, the DPIC reviews "Recent Cases of Possible Mistaken Executions" (p 23-24), wherein they list the cases of Roger Keith Coleman, Leonel Herrera, and Jesse Jacobs - 3 cases which helped solidify the anti-death penalty movements penchant for lack of full disclosure and/or fraud. For the fourth case, therein, that of Coleman Wayne Gray, the DPIC makes no effort to claim innocence.

Furthermore, the DPIC and most opponents fail to review that the role of clemency and appeals in such cases is to judge the merits of death row inmates claims regarding innocence and/or additional trial error. Indeed, the release of those 69 inmates proves that such procedures worked precisely, and often generously, as intended. Also contrary to opponents claims, clemency is used generously to grant mercy to death row murderers and to spare inmates whose guilt has come into question. In fact, 135 death row inmates have been spared by clemency or commutation from 1973-95 (ibid.). This represents 43% of the total of those executed during that time - a remarkable record of consideration and mercy.

In reviewing the DPIC's original 1993 study, finding 48 (of the 69) "innocent" defendants on death row, the DPIC states its debt for the "... ground breaking work done by ... Professors Michael Radelet and Hugo Bedau"(p 1) in their "Miscarriages of Justice in Potentially Capital Cases". See below.

The most significant study conducted to evaluate the evidence of the "innocent executed" is the Bedau-Radelet Study ("Miscarriages of Justice in Potentially Capital Cases," 40, 1 Stanford Law Review, 11/87). The study concluded that 23 innocent persons had been executed since 1900. However, the study's methodology was so flawed that at least 12 of those cases had no evidence of innocence and substantial evidence of guilt. Bedau & Radelet, both opponents, "consistently presented incomplete and misleading accounts of the evidence." (Markman, Stephen J. & Cassell, Paul G., "Protecting the Innocent: A Response to the Bedau-Radelet Study" 41, 1 Stanford Law Review, 11/88). The remaining 11 cases represent 0.14% of the 7,800 executions which have taken place since 1900. And, there is, in fact, no proof that those 11 executed were innocent. In addition, the "innocents executed" group was extracted from a Bedau & Radelet imagined pool of 350 persons who were, supposedly, wrongly convicted of capital or "potentially" capital crimes. Not only were they at least 50% in error with their 23 "innocents executed" claim, but 211 of those 350 cases, or 60%, were not sentenced to death. Bedau and Radelet already knew that plea bargains, the juries, the evidence, the prosecutors, judicial review and/or the legal statutes had put these crimes in the "no capital punishment" category. Indeed, their claims of innocence, regarding the remaining 139 of those 350 cases, should be suspect, given this study's poor level of accuracy. Calling their work misleading hardly does this "academic" study justice. Had a high school student presented such a report, where 50-60% of the material was either false or misleading, a grade of F would be a likely result.

Indeed, Michigan Court of Appeals Judge Stephen Markman finds that "... the Bedau-Radelet study is remarkable not (as retired Supreme Court Judge Harry Blackmun seems to believe) for demonstrating that mistakes involving the death penalty are common, but rather for demonstrating how uncommon they are ... This study - the most thorough and painstaking analysis ever on the subject - fails to prove that a single such mistake has occurred in the United States during the twentieth century." Presumably, Bedau and Radelet would have selected the most compelling 23 cases of the innocent executed to prove their proposition. "Yet, in each of these cases, where there is a record to review, there are eyewitnesses, confessions, physical evidence and circumstantial evidence in support of the defendant's guilt. Bedau has written elsewhere that it is 'false sentimentality to argue that the death penalty ought to be abolished because of the abstract possibility that an innocent person might be executed when the record fails to disclose that such cases exist.' ... (T)he Bedau and Radelet study ... speaks eloquently about the extraordinary rarity of error in capital punishment." ("Innocents on Death Row?", National Review, September 12, 1994).

Another significant oversight by that study was not differentiating between the risk of executing innocent persons before and after *Furman v Georgia* (1972). There is, in fact, no proof that an innocent has been executed since 1900. And the probability of such a tragedy occurring has been lowered significantly more since *Furman*. In the context that hundreds of thousands of innocents have been murdered or seriously injured, since 1900, by criminals improperly released by the U.S. criminal justice system (or not incarcerated at all!), the relevant question is: Is the risk of executing the innocent, however slight, worth the justifications for the death penalty - those being retribution, rehabilitation, incapacitation, required punishment, deterrence, escalating punishments, religious mandates, cost savings, the moral imperative, just punishment and the saving of innocent lives?

Predictably, opponents still continue to fraudulently claim, even today*, that this study has proven that 23 "innocent" people have been executed, even though Bedau and Radelet, the authors of that study, conceded - in 1988 - that neither they nor any previous researchers have proved that any of those executed was innocent: "We agree with our critics that we have not proved these executed defendants to be innocent; we never claimed that we had." (41, 1 Stanford Law Review, 11/1988).

One of opponents most blatant frauds is their claim that the U.S. Supreme Court, in *Herrera v. Collins* (113 S. Ct. 853, 870{1993}), found that the Herrera "decision would allow the states to execute a defendant for a crime that he did not commit. Justice O'Connor's concurring opinion makes clear that Herrera does not stand for that proposition. Justice O'Connor stated, 'I cannot disagree with the fundamental legal principal that executing the innocent is inconsistent with the Constitution' and 'the execution of a legally and factually innocent person would be a constitutionally intolerable event.' As Justice O'Connor stated, the Court assumed for the sake of argument 'that a truly persuasive demonstration of actual innocence would render any such execution unconstitutional and that federal habeas relief would be warranted if no state avenue were open to process the claim.' Id., at 874. That is the holding in *Herrera*, and any claim to the contrary is simply not correct."

"Moreover, Herrera's claim of innocence was weak at best, seeking to blame his dead brother for the crimes Herrera was found guilty of committing. When the evidence against Herrera is considered against the proffered evidence of innocence, it is not surprising that none of the federal judges to hear this claim, including the dissenters in the Supreme Court, have ever expressed any doubt as to Herrera's guilt." Kenneth S. Nunnelley in Congressional testimony, July 23, 1993

*Example: Stephen Bright, Director, Southern Center For Human Rights (Atlanta, Ga.). claims that Aubrey Adams of Florida represents a case of the "innocent" executed. (Cochran & Grace, Court TV, 3/ 25/97). Since neither JFA nor the Death Penalty Information Center could locate an Aubrey Adams for which such claims had been made, JFA assumes that Mr. Bright meant the well known case of James Adams of Florida.

The James Adams case is particularly worthy of review. Not only is the Adams case one of those alleged 23 "innocent" executed, but his is the only post-Furman case cited by Bedau and Radelet. Bedau and Radelet's claims and "evidence" are too lengthy to review here. A short review is all that is required to discredit such claims. They "proved" Adams' innocence by a review, not of the case facts, but of Adams' own claims from his clemency hearing! This dishonest review was presented as an objective evaluation of the case when, in fact, it was completely biased, with only one goal - to present the case facts in the light most favorable to Adams and to neglect or suppress the voluminous evidence of Adams' guilt. Cassell and Markman exposed this academic fraud and presented the case facts from the full record, as Bedau and Radelet should have. The case for Adams' guilt is solid. Mr. Bright is a leading spokesperson in the anti-death penalty movement

Both Bedau and Radelet refused to claim that Adams was innocent. Yet, this does not prevent opponents from making false claims to the contrary. If Mr. Bright was discussing the James Adams case, this is a classic, standard example of the type of anti-death penalty fraud found every day.

Irresponsible editors, publishers and authors are common within this debate. Two examples: Punishment and the Death Penalty, Baird, Robert & Rosenbaum, Stuart, Prometheus, 1996 and Capital Punishment: the death penalty debate, Gottfried, Ted, Enslow, 1997. Both still claim that 23 "innocents" have been executed!

B. THE INCAPACITATION AND THE DETERRENT EFFECTS

SUMMARY - The incapacitation effect saves lives - that is, that by executing murderers you prevent them from murdering again and do, thereby, save innocent life (B.1-4, 7, 9, 10 & 15). The evidence of this is conclusive and incontrovertible. Furthermore, the individual deterrent effect also proves that executions save innocent life (B.7-9 & 11-18). This effect represents those potential murderers who did not murder under specific circumstances because of their fear of execution. There are many, perhaps thousands, of such documented cases, representing many innocent lives saved by the fear of execution. Circumstances dictate that the majority of these cases will never be documented and that the number of innocent lives saved by individual deterrence will be, and has been, much greater than we will ever be able to calculate. Finally, there are more than 30 years of respected academic studies which reveal a general, or systemic, deterrent effect, meaning that there is statistical proof that executions produce fewer murders (B. 7-9 & 11-18). However, such studies are inconclusive

because there are also studies that find no such effect - not surprising, as the U.S. has executed only 0.08% of their murderers since 1973. Because such studies are inconclusive, we must choose the option that may save innocent lives. For, if there is a general deterrent effect, and we do execute, then we are saving innocent lives. But, if there is a general deterrent effect and we don't execute murderers, we are sacrificing innocent lives. If our judgement is in error regarding general deterrence, then such error must be made on the side of saving innocent lives and not on the side of sacrificing innocent lives. This is a moral imperative. Furthermore, the individual deterrent effect could not exist without the general deterrent effect being present. The individual deterrent effect is proven. Therefore, even though it may be statistically elusive, the general deterrent effect is proven by individual deterrence. Individually and collectively, these three effects present a strong moral argument for executions. Executions save lives. Period. Our choice is to spare the lives of the murderers and to, thereby, sacrifice the lives of the innocent or to execute those murderers and to, thereby, spare the lives of the innocent. What do you choose?

The test for deterrence is not whether executions produce lower murder rates, but that executions produce fewer murders than if the death penalty did not exist. For example, the fact that the state of Delaware executes more people per capita (1/87,500) than any other state and has a murder rate 16 times lower than Washington, D.C. (5/100,000 vs 78.5/100,000) is not proof, per se, that the death penalty deters murder in Delaware or that the lack of the death penalty escalates murders and violent crime in Washington, D.C., which has the highest violent crime and murder rates in the U.S. Be careful how you explain and understand deterrence.

1. The argument that murderers are the least likely of all criminals to repeat their crimes is not only irrelevant, but also increasingly false. 6% of young adults paroled in 1978 after having been convicted of murder were arrested for murder again within 6 years of release. ("Recidivism of Young Parolees," 4, 1987, BJS). Murderers have so violated the human rights of their victims and of society that it should be a moral imperative that they never again have that opportunity.
2. Obviously, those executed can't murder again. "Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following their previous murder convictions. Executing each of these inmates would have saved 821 lives." (41, 1 Stanford Law Review, 11/88, pg. 153) Using a 75% murder clearance rate, it is most probable that the actual number of lives saved would have been 1026, or fifty times the number legally executed that year. This suggests that some 10,000 persons have been murdered, since 1971, by those who had previously committed additional murders (JFA). See B.5.
3. Death penalty opponents spend millions of dollars and countless man hours fighting the legal execution of, at most, 56 of our worst human rights violators per year, when they do nothing to fight for the end of those inhumane parole and probation release policies which result in the needless injury and slaughter of the innocent. "The U.S. Department of Justice estimates that convicted criminals free on parole and probation . . . commit 'at least' 84,800 violent crimes every year, including 13,200 murders, 12,900 rapes, and 49,500 robberies." American Guardian, May 1997, pg. 26. Incredibly, this slaughter does not include violent crimes committed by repeat offenders who are released and who are not on "supervision". Where is the compassion in honoring the previous victim's suffering and in protecting the human rights of future victims? Opponents' actions show virtually no compassion for the victims of violent crime or concern for future victims, yet, they exhibit overwhelming support for those who violate our human rights and murder our loved ones.
4. 9-15% of those on death row committed, at least, one additional murder, prior to that murder (or those murders) which has currently put them on death row; 67% had a prior felony conviction; 42% had an active criminal justice status when they committed their capital offense; 14% of those sentenced to death from 1988-94, had received two or more death sentences ("Capital Punishment 1994", BJS 1995 & JFA). Should we err on the side of caution and protect the innocent and honor the memories of those murdered or should we give murderers the opportunity to harm again? Should we put prison personnel and other prisoners at any additional risk from known murderers? Prisoners on death row are 250% more likely to murder, in prison, than are prisoners in the general population. Lester, D., "Suicide and Homicide on Death Row", American Journal of Psychiatry, 143,

559, 1986.

5. The expected punishment for murder was only 1.5 years in 1985 and rose to only 2.7 years in 1995! (THE REYNOLD'S REPORT, "Crime and Punishment in the U.S.", National Center for Policy Analysis, 1997). Expected punishment is calculated by measuring the probability of being caught, incarcerated, and time served. Why have we chosen to be so generous to murderers and so contemptuous of the human rights and suffering of the victims and future victims? See B. 2.
6. For a criminal justice system to have credibility and deterrent value, two factors are required: (1) a high rate of arrest and (2) punishment which reflects the severity of the crime, the criminal's record and the demand for justice. The U.S. system has neither. Of the 10.3 million violent crimes in 1993, only 100,000 of those victimizations, or 1%, resulted in an actual jail sentence. Only 6.2% of all violent crimes result in arrest. (Prof. John J. Dilulio, Jr., Princeton Univ. 1995, *The State of Violent Crime in America, 1/96 and Criminal Victimization 1993*, BJS, 1995.) The human rights of victims and future victims are consistently ignored.
7. With no death penalty and only life without parole (LWOP), there is no deterrent for LWOP inmates killing others while in prison or after escape. Indeed, there is actually a positive incentive to murder if a criminal has committed a LWOP offense and had not yet been captured. Currently, there are a number of inmates who have killed numerous people in prison or after escape. Their punishment could not be increased because there is no death penalty in those states. Therefore, they will never be punished for those crimes. Never. Totally unacceptable, by any standard. Not surprisingly, death penalty opponents believe that LWOP is more severe than the death penalty. Hamilton, V., & Rakin, L.: "Interpreting the 8th Amendment", Bedau, H., & Pierce, C., ed., *Capital Punishment in the United States*, New York, AMS, 1976. This absurd belief, which has now become the newest mantra of opponents, is contradicted by all other surveyed groups, including prisoners (B.11 & 16).
8. Death Penalty opponents claim that there is a "brutalization effect" with executions, meaning, that executions show a low regard for human life and do, thereby, cause an increase in the murder rate. If the brutalization effect is real, it would be the only known legal sanction to cause an increase in wrongful behavior. Why would criminals become more likely to engage in illegal activities because the punishments for those activities become more severe? How absurd. Have dramatic increases in the rates of incarceration resulted in dramatic increases in kidnappings? Just the opposite. Further denouncing the brutalization effect is the fact that many respected studies show that executions do produce an individual and a general deterrent effect. And, there is, of course, common sense.
9. There are four rational conclusions one can make regarding general, or systemic, deterrence. (1) If the death penalty is not a deterrent and we execute, then we are executing our worst human rights violators. (2) If the death penalty is a deterrent and we execute, then we are executing those criminals and saving innocent lives. (3) If the death penalty is not a deterrent and we don't execute, then we are not sacrificing innocent lives. (4) If the death penalty is a deterrent and we don't execute, then we are sacrificing innocent lives. Regarding deterrence, it is necessary to err on the side of saving innocent life and not to err on the side of sacrificing innocent life. These are moral imperatives.
10. There are two mistakes we can make with those convicted of violent crimes. First, we can misjudge their character and keep them incarcerated too long, when they could have become constructive free persons, repaying even more their debt to society and to their victim(s). Secondly, we can misjudge their character and release them too soon, so that they further destroy the lives of our children, our brothers and sisters, our spouses and our parents, creating additional economic, physical, emotional and spiritual loss. For far too long, the U.S. has chosen to err on the side of those who have violated our human rights and has, thereby, expanded the river of blood and tears for victims and their survivors (See B.3). No more. Not in our name. We demand that the memories and suffering of crime victims be honored by justice - that is by a just punishment which reflects the severity of the crime. And, we must always err on the side of caution and compassion for those not yet harmed.

11. The most conclusive evidence that criminals fear the death penalty more than life without parole is provided by convicted capital murderers and their attorneys. 99.9% of all convicted capital murderers and their attorneys argue for life, not death, in the punishment phase of their trial. When the death penalty becomes real, murderers fear it the most. While it is obvious that the fear of execution did not deter those murderers from committing a capital crime, it is also clear that such fear is reduced because executions are neither swift nor sure in the U.S. However, as the probability of that punishment rises for those murderers, even they show a great fear of the death penalty. Although you will never deter all murderers, the effect of deterrence will rise as the probability of executions rise. Because, as the probability of executions rises, the fear of that punishment will also rise. And, that which we fear the most deters the most. Indeed, prisoners rate the death penalty as the most feared punishment, much more so than life without parole. Sehba, L. & Nathan, G., "Further Explorations in the Scale of Penalties", *British Journal of Criminology*, 24:221-249, 1984.
12. Opponents proclaim that the death penalty is a barbaric act so dreadful in its implications that we can hardly bear to contemplate the horrors of its terrible character. On the other hand, they also assert that potential murderers, when confronted with the horrors of execution, will not be deterred by its infliction upon them. That proposition is, of course, absurd on the face of it (Revised from M. Stanton Evans, *Clear and Present Danger*).
13. Assume that all murderers would instantly die upon murdering. Murderers would then kill only if they wished to die themselves. Murder/suicide is an extremely small component of all murders. Therefore, if a swift and sure death penalty was universally applied to our worst criminals, it is logically conclusive that the death penalty would be a significant deterrent and that many innocent lives would be saved. In fact, swift and sure executions do result in deterrence: (A) The greater the publicity surrounding executions, the greater the deterrent effect. Phillips, D. "The Deterrent Effect of Capital Punishment". *American Journal of Sociology*, 86:139-158, 1980; Philipps, D. & Hensley, J., "When Violence is Rewarded or Punished". *J. Commun.*, 34(3); 101-116, 1984; and the various studies by Prof. Steven Stack, Wayne St. U. (1988-1995) and (B) The higher the rate of execution, the greater the deterrent effect. Lester, D. "Executions As A Deterrent To Homicide", 44:562, 1979a and "Deterring Effect of Executions on Murder as a Function of Number and Proportion of Executions", 45:598, 1979b, both from *Psychol. Rep.* and Wasserman, L.: "Non-deterrent Effect of Executions on Homicide Rates", *Psychol. Rep.*, 58:137-138, 1981. The State of Delaware has the highest execution rate per capita and low homicide rates.
14. The individual deterrent effect is proven by many, perhaps thousands, of individual, fully documented cases where criminals have admitted that the death penalty was the specific threat which deterred them and/or others from committing murder. Indeed, one study showed that criminals, by a 5:1 ratio, believed that capital punishment was a significant enough deterrent to prevent them and/or others from murdering their victims (*People vs Love*, 56 Cal 2d 720 (1961), McComb, J. dissenting. see also: (A) "Controversy Over Capital Punishment", *Congressional Digest*, Jan., '73, p. 13; (B) L.A.P.D. study within *Aikens vs Ca.*, No. 68-5027, Oct. Term, 1971, U.S. Supreme Court; (C) Carol Vance, "The Death Penalty After Furman", *The Prosecutor*, vol. 9, no. 4 (1973), p. 703; (D) Carrington, F., *Neither Cruel Nor Unusual*, Pgs. 92-100(1978); (E) Don Hooloschultz, "Gunman Slain, Hostages O.K.", *Washington Star News*, 8/23/73, p.A-1; (F) Jim Landers, "4 Guilty in Holdup Sentence", *Washington Post*, 12/8/73, p.B-1; (G) Larry Derryberry, "It Is The Fear That Death May Be The Punishment That Deters", *Police Digest*, Spring/Summer 1973, p.27, col.2; (H) "Langley says Texas death penalty affected his actions during escape", by Stephen Martin, *The Daily Democrat* (Ft. Madison, Iowa), 1/8/97, pg 1. Indeed, prisoners rate the death penalty as a much more severe penalty than they do life without parole (B.12). While it is difficult to prove a negative, i.e. "How many murders does the death penalty cause not to occur?", there is absolute evidence that the individual deterrent effect of executions saves innocent lives. Extensive worldwide research on individual deterrence would, undoubtedly, reveal significant general deterrent effect.
15. Regarding the deterrent affect of the death penalty, poet Hyam Barshay made the following observation, "The death penalty is a warning, just like a lighthouse throwing beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their

way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down." Prof. Ernest van den Haag, "On Deterrence and The Death Penalty", *Journal of Criminal Law, Criminology and Police Science*, vol. 60, no.2 (1969).

16. 30 years of studies suggest that the death penalty is a general, or systemic, deterrent. (See works by Profs. D. Cloninger, S. Cameron, I. Ehrlich, W. Bailey, D. Lester, S. Layson, K. I. Wolpin, L. Phillips, S. C. Ray, S. Stack, etc.) Examples: a) A 1967-68 study revealed 27 states showed a deterrent effect (Bailey, W., 1974); b) The 1960's showed a rapid rise in all crimes, including murder, while both prison terms and executions declined (Passell, P. & Taylor, T., 1977; Bowers, W. & Pierce, G., 1975); c) Murder increased 100% during the U.S.'s moratorium on executions (Carrington, F., Neither Cruel Nor Unusual); d) 14 nations that abolished the death penalty showed that murder rates increased 7% from the 5 year pre-abolition period to the 5 year post abolition period (Archer, et al, 1977); e) A 37 state study showed that 24 states showed a deterrent effect, 8 states showed a brutalization effect and 5 states showed no effect (Bailey, W., 1979-80); and f) econometric studies indicate that each execution may deter 8 or more murders (Cameron, S., 1994). Although these studies have been produced by respected social scientists, there are also studies which show no general deterrent effect. Indeed, with the complexity of these studies and with the number of variables required to accurately measure the general deterrent effect of executions on murder rates, it is arguable if there ever will be a statistical consensus with general deterrence studies. With so few executions and so many murders, the general deterrent effect may remain statistically elusive. However, it is that very inconclusive nature of general deterrence which provides the two reasons which require executions. First, we must choose to use executions because they may save innocent life. Whereas, if we choose not to use executions and there is a general deterrent effect, we would be sacrificing innocent lives. Therefore, a moral imperative exists to choose executions (see B. 9). Secondly, the individual deterrent effect would not exist but for the presence of general deterrence. And because the individual deterrent effect is proven and cannot be contradicted, we know that the general deterrent effect must exist, even though its existence may remain inconclusive by statistical analysis.
17. Opponents state that if the death penalty was a deterrent then states that have the death penalty would have a reduced homicide rate. Delaware, which executes more murderers per capita than any other state in the U.S.A., also has low homicide rates. Furthermore, general or systemic deterrence is not necessarily measured by low or reduced homicide rates, but by rates that are lower than they otherwise would be if the death penalty was not present. Additionally, some countries, such as Saudi Arabia, have swift and sure executions and very low violent crime rates. It is not surprising that the U.S., which has executed only 0.06% of its murderers since 1967, does not overtly show a general deterrent effect. While most in the U.S. would not advocate criminal justice systems like that of Saudi Arabia, it is also very clear that the American criminal justice system fosters the additional slaughter of its own innocent citizens.
18. The highest murder rate in Houston (Harris County), Texas occurred in 1981, with 701 murders. Texas resumed executions in 1982. Since that time, Houston (Harris County) has executed more murderers than any other city or state (except Texas) AND has seen the greatest reduction in murder, 701 in 1981 down to 261 in 1996 - a 63% reduction, representing a 270% differential! (FBI, UCR, 1982 & Houston Chronicle, 2/1/97, pg. 31A).

C. RACE, SENTENCING AND THE DEATH PENALTY

1) The most vile strategy of death penalty opponents is their use of propaganda to nurture hatreds and mistrust between race and class. Bryan Stevenson, a well known opposition spokesman and attorney with Equal Justice Initiative (Montgomery, Al.), claims that the death penalty reflects the middle class' desire to strike out at the poor and racial minorities ("A Matter of Life and Death", *Christianity Today*, 8/14/95). Sister Helen Prejean (*Dead Man Walking*) joins this hideous chorus, proclaiming that "(m)iddle-class and upper middle-class white people...are so much for the death penalty (to) 'Keep those dangerous people (the poor and minorities) in their place.' " ("Opposing the Death Penalty", *AMERICA*, 11/9/96, pg.12.) Clearly, these statements reveal only their prejudice. Prejean continues "It didn't take long to see that for poor people, especially poor black people, there

was a greased track to prison and death row." (The Progressive, 1/96, p. 32(4) 60,1). Is Sister Prejean saying that poor minorities are incapable of stopping themselves from committing capital murder!? Not only are Sister Prejean's statements false, they are also grossly insulting to the poor and to minorities. Over 99% of all persons, including poor minorities, restrain themselves from committing capital murder. And there is, of course, no excuse for anyone that commits capital murder. Stevenson and Prejean do hereby reflect either their unbelievable ignorance or their willful and foul deception. Based on their active involvement in the death penalty debate, both Stevenson and Prejean should (must?) be aware that (1) In the most extensive study of the economics of death row inmates, it was shown that, while 74% of Georgia murderers were poor, only 38% of those on Georgia's death row were poor (C.13).; (2) there is no consensus in statistical analysis which proves that wealthy capital murders are less likely to be executed than their poorer ilk. In fact, statistics indicate that wealthy capital murderers may be more likely to be executed. (C.13); (3) the majority of those on death row are white (NAACP LDF, 1996); (4) the majority of those executed are white (C.2); (5) since 1929, white murderers have been more likely to have been executed than black murderers (C.10); (6) "...white murderers, no matter who they kill, are more likely to get the death penalty than black murderers (11.1% to 7.3%). Furthermore, whites who kill whites are slightly more likely to be on death row than blacks who kill whites. Finally, whites who kill blacks are slightly more likely to be on death row than blacks who kill whites." (Jared Taylor, Paved With Good Intentions, 40-41, Carroll & Graf Pub., 1992; (7) whites are executed 15 months quicker than blacks ("Capital Punishment, 1995", BJS 1996); (8) Whites are executed at rates nearly 50% above their involvement in murder. Blacks are executed at rates 20% below their involvement in murder. (C.2); and finally, (9) Murderers are put to death, not based on the race or economic status of the victim or the murderer, but based upon death penalty statutes, the aggravated nature of and all specific circumstances of the crime, the criminal background of the murderer, and the other specific factors mandated by Supreme Court decisions. Since 1973, there is absolutely no credible evidence to support any other conclusion. Despicably, opponents cry "RACISM!" to further their agenda, knowing, full well, that such claims are false.

2) One of opponents' popular false claims is that it is the race of the victim which determines who is on death row. 82% of the murder victims in death penalty cases are white, 13% are black, a 6:1 ratio (NAACP Legal Defense Fund (LDF), 1996). Opponents, such as Kica Matos, NAACP LDF, Steven Hawkins, Exec. Dir., National Coalition to Abolish the Death Penalty (NCADP) and Sister Prejean, longtime Chairperson of the NCADP and author, Dead Man Walking, present this fact as evidence that the "system" values white lives more than black lives. If true, then we must wonder why whites represent 56% of those executed, and blacks 38% (NAACP LDF, Summer 1996) when blacks have committed 47% of all murders, and whites 38%. Whites are executed at rates nearly 50% above their involvement in murder, blacks are executed at rates 20% below their involvement in murder. From 1991-94, 34% of murderers have been white, 54% black (Special run 1980-94 BJS data, 1/13/97, for non-Hispanic whites and blacks. JFA calculations for known race/ethnicity.).

Could it be that we just hate white murderers more? Or that we only care about white capital murder victims? Or should we conclude that the "system" focuses its benevolence toward black murderers, but its racism against black victims? How absurd. Such perverse conclusions, by opponents, are expected and serve only to further undermine their quickly eroding credibility. Successful capital prosecutions have nothing to do with the race of the victim or of the defendant and everything to do with the nature of the crimes. The most thorough evaluation of this subject was presented in McCleskey v. Georgia (Zant/Kemp), wherein Federal District Judge Owen Forester accurately found that "the best models which (McCleskey expert) Baldus was able to devise...produce no statistically significant evidence that race (of the victim or of the defendant) plays a part in either (the prosecution's or the jury's capital decisions)." (580 Federal Supplement 338, p 368, 2/1/84).

Could it be that whites are, overwhelmingly, the victims in death row cases because whites are, overwhelmingly, the victims in capital crimes? What is the ratio of white to black victims under the relevant, but non-homicide circumstances, which, when combined with homicide, become capital crimes? (A) The most relevant economic violent crime is robbery with injury, which shows a 4:1 ratio of white victims to black victims (C.5); (B) By a 5:1 ratio, whites are more likely to be victims of rape/sexual assault than are blacks (BJS, 1977-1984); (C) For all property crimes (theft, burglary, auto theft), there is a 7:1 ratio of white to black victims ("Sourcebook, 1994," BJS 1995, tables 3.21, 3.25); (D) A comparison of only black and white perpetrators and victims reveal that whites are five times more likely to be the victims of violent crime than are blacks, or 7.5 v 1.5 million, a 5:1 ratio ("Criminal Victimization, 1993" BJS 1995); and, for homicides, which by themselves, qualify for the death penalty: (E) In death penalty states, police victim murders are capital crimes. From 1985-1994, 87% of murdered officers were white, 12% black, or 7:1 (Law Enforcement Officers Killed and Assaulted, FBI:UCR, 1994); (F)

Whites make up a dominant percentage of multiple/serial murderers, whose victims are overwhelmingly white, thereby disproportionately and correctly raising the number of white victims in execution cases. In such death row cases, 87% of the victims are white, 13% black, or 7:1 (NAACP LDF data, 1996); (G) Many death row cases involve stranger murders. There is a 7:1 ratio of white to black strangers (US Census, avg. 1970-80-90); and (H) Research and appellate courts (through McCleskey) have confirmed that white victim murders are the most aggravated, thus, by statute, enhancing the likelihood of a death sentence in those cases (C. 1-5 & 9-12). These factors, and others within this section, are consistent with the 6:1 ratio of white to black victims in capital cases.

But, wait, don't blacks and whites represent about an equal number of murder victims? Yes, but, make no mistake, murder victims and capital murder victims are two very distinct groups. And only capital murders are relevant to death penalty cases. Capital crimes are very unique, combining murder with specific circumstance, such as subsets A-H. If homicide rates are statistically consistent within subsets A-D, as McCleskey and additional studies indicate (C. 1-5 & 9-12), then it is subsets A-H, with additional required factors such as the murderer's criminal history, capital procedures (see F), capital statutes, crime statistics, aggravating factors and other specific facts of the case (hereinafter McCleskey et al), which result in the distribution of victims in these cases.

Should we balance the scales of justice and execute equally the killers of blacks and whites? Only if you wish to increase the number of black murderers executed. 93% of all black murder victims are murdered by blacks. The overwhelming majority of black on black murders have mitigating circumstances, thereby reducing the numbers of blacks who might otherwise be executed.

3) The U.S. General Accounting Office Report "DEATH PENALTY SENTENCING: Research Indicates Pattern of Racial Disparities" (GAO/GGD-90-57, 2/90) is cited by opponents as proof that the "race of the victim" effect has been proven. Not quite. First, some of the studies which the GAO included in their analysis included non-capital murders. This certainly impairs the integrity of the results because only capital murders should have been included. Secondly, Drs. Stephen Klein and John Rolph, "Relationship of Offender and Victim Race to Death Penalty Sentences in California" (Jurimetrics Journal, 32, Fall 1991), found that, "After accounting for some of the many factors that may influence penalty decisions, neither race of the defendant nor race of the victim appreciably improved prediction of who was sentenced to death . . .". Thirdly, Smith College Professors Stanley Rothman and Stephen Powers ("Execution by Quota?", The Public Interest, Summer 1994), found that legal variables, such as prior criminal history and the aggravated nature of the murder, are the proven basis for imposition of the death penalty. The black/white variation in sentencing has generally been reduced to zero when such legal variables are introduced as controls. Fourth, crime statistics show a 4:1 to a 7:1 ratio of white to black victims in circumstances relevant to death penalty cases.. Such ratios are consistent with the 6:1 ratio of white to black victims in death row cases (C.1,2,4,5). Fifth, any affirmative conclusions regarding the GAO study disregards the findings in McCleskey, that an empirical/statistical study cannot separate the causal effect of legitimate factors influencing jury decisions from the effects of possible racial biases, whereby The Court found "Where the discretion that is fundamental to our criminal justice process is involved, we decline to assume that what is unexplained [by measured factors] is invidious." (481 US at 313). See Dr. Joseph Katz' enforcement of the McCleskey majority: "Statement to the Senate Subcommittee on the Judiciary Concerning the Relationship Between Race and the Death Penalty" 10/2/89.

4) Based on a study conducted by Profs. Baldus, Woodward and Pulaski, McCleskey argued that the death penalty was racist. In August, 1983 Federal District Court Judge J. Owen Forester found that the study's conclusions of racial bias were without merit. In 1985, the 11th Circuit Court of Appeals, by a 9-3 vote, stated "Viewed broadly, it would seem that the statistical evidence presented here...confirms rather than condemns the (death penalty) system." In April 1987, the Supreme Court (5-4) stated that the referenced study did not establish that capital punishment discriminates against black defendants or killers of white victims. "At most, the Baldus study indicates a statistical discrepancy that appears to correlate with race. Apparent disparities in sentencing are an inevitable part of our criminal justice system. The discrepancy indicated by the Baldus study is 'a far cry from any major systemic defects'. "McCleskey offers no evidence...that would support an inference that racial considerations played a part in his sentence". "...the Baldus study is clearly insufficient to support an inference that any of the decision-makers in McCleskey's case acted with discriminatory purpose." "Even Professor Baldus does not contend that his statistics prove that race enters into any capital sentencing decisions or that race was a factor in McCleskey's particular case."

5) From 1976-1995, 5 white murderers have been put to death for the murder of black persons and 101 black

murderers have been put to death for the murder of white persons (NAACP LDF, 1996). Opponents falsely contend that this is evidence of racism in the "system". That 101:5 ratio, or 20:1, is consistent with statistics that show aggravated crimes (those crimes committed with the murder which may make a crime eligible for the death penalty) are committed by blacks against whites in far greater numbers than by whites against blacks. For all violent crimes, there are ten times as many black offenders (2,016,939) involved in white victim violent crimes as there are white offenders (210,869) involved in black victim violent crimes, or a 10:1 ratio. (The State of Violent Crime in America, pg. 12, 1/96, data derived from Criminal Victimization in the U.S., 1993, BJS forthcoming, tables 42 and 48. JFA has assumed multiple offenders to be two offenders for calculation purposes.) In addition, blacks are nearly three times as likely to murder whites (849), as whites are to murder blacks (304), or 3:1 (Sourcebook 1994, BJS 1995, table 3.123). If murder rates are statistically consistent within the violent crime category, as McCleskey et al indicate, then blacks are, statistically, by a 30:1 (10:1 X 3:1) ratio, more likely to murder whites, than whites are to murder blacks, in those circumstances where an additional aggravating factor is present (see C2). These are those crimes most eligible for the death penalty. That statistically projected ratio of 30:1 is hardly inconsistent with the 20:1 ratio for black offender(s)/white victim vs white offender(s)/black victim executions. The most relevant aggravated crime is robbery with injury, wherein blacks are 21 times more likely to be involved in such crimes as are whites. This 21:1 ratio represents 1.4 million black offender(s)/white victim vs. 68,000 white offender(s)/black victim for robbery with injury crimes (JFA, using BJS, 1977-84 data). If overall murder statistics are consistent, within this crime category, as McCleskey et al suggests, then there is a 30-60:1 ratio of black on white vs white on black murders within this robbery/murder category. (From 1977-1984).

6) 75% of blacks and 35% of whites believe that blacks are treated more harshly than whites by the criminal justice system. This is a deserved reputation, particularly in the South. Blacks have suffered some 400 years of slavery and blatantly racist criminal justice practices. From the practices of punishing blacks, who rape whites, with death and whites, who rape blacks, with a slap on the wrist, to the three trials needed to convict Byron de la Beckwith for the murder of civil rights leader Medgar Evers, generations of black Americans cannot and must not forget.

7) In 1994, in northeastern states, 36% of those on death row were white, 59% black. In southern states, 57% were white, 41% black ("Capital Punishment 1994", BJS, 1995).

8) In 1994, death row inmates median level of education was the 12th grade. ("Cap.Pun. '94", BJS 1995)

9) After examining 42,500 criminal files in the nation's 75 largest counties, Patrick Langan (BJS) concluded that there was no evidence "...that, in the places where blacks in the U. S. have most of their contacts with the judicial system, that (the) system treats them more harshly than whites." (John Dilulio, Jr., "White Lies About Black Crime", The Public Interest, 1995. See concurring support within "Research on Sentencing", National Research Council, 1983.)

10) No evidence of system wide discrimination in the imposition of the death penalty exists beyond the 1950's. From 1929-66, white murderers were more likely to be executed than black murderers (10.4 vs 9.7/1000). This trend continues today. (C.2) (Gary Kleck, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty", American Sociological Review, 12/81.)

11) A study of the death penalty, as imposed by Harris County (Houston, Texas, USA) juries, since 1982, found that the death penalty was imposed on white and black murderers in proportion to the capital offenses committed by those race classifications (The Houston Post, 10/16/94).

12) Although blacks make up 12% of the US population, they comprise 44% of the prison population. (BJS, Prisoners in 1994). Researchers find a close relationship between the racial distribution in arrest and prison statistics and the race of offenders as described by crime victims. In other words, according to the reports from victims, racial groups are represented in prison according to their involvement in criminal activity. (Patrick Langan, Racism on Trial; New Evidence to Explain the Racial Composition of Prisons in the U.S., 1985). Overwhelmingly, sentencing studies show that the offender's prior criminal record and the aggravated nature of the crime are the key factors in making imprisonment decisions (See also Texas Criminal Justice Policy Council, A Source Book of Arrest and Sentencing By Race, 1994; Al Blumstein, On The Racial Disproportionality

of U.S. Prison Populations, (1982); M. Hindelang, Crime Victimization (1976) and Race and Involvement (1978); U.S. General Accounting Office, Racial Differences in Arrests, 1/20/94.) Nevertheless, the racial aspects of crime and punishment should be continuously scrutinized. For example, Langan also finds that in 1979 and 1982, blacks were over represented in prison by 16% and 15%, respectively.

13) THE WEALTHY AND DEATH ROW - Contrary to opponents claims, there is no systemic evidence that wealthy capital murderers are less likely to be executed than their poorer ilk. Drawing only on personal knowledge, we found that since 1973, in Texas, alone, at least seven middle class to wealthy murderers have been put on death row. Four, Markum Duff Smith, George Lott, Robert Black, Jr., and Ronald O'Bryan have been executed. Three additional await execution. Extensive, objective research would, undoubtedly, reveal many more. Don't forget John Wayne Gacy and Ted Bundy. Furthermore, Dr. Joseph Katz found that, while 74% of all Georgia murder defendants were poor, only 38% of those on death row were poor (McCleskey). Informed Speculation: 5% of the U.S. population (12 million) can afford to pay the \$400,000* cost for their capital trial and appeals. Because financial need can be excluded, the category of wealthy capital murderer can be assumed to murder at a rate 10 times less than their poorer ilk. Fact: 0.20% of the U.S. population commits murder. 1.3% of those are sentenced to death. Only 6% of those have been executed. Therefore, the projected number of wealthy executed from 1976-1996 is 2, or 12 million x .1 x .0020 x .013 x .06. Using 1973-1996 data. *conservative estimate based on opponents' high cost claims (see E)

14) SEXISM AND THE DEATH PENALTY - Some claim that the death penalty is sexist. The ratio of men to women on death row (and executed) is 68:1, or 3400:50 (NAACP LDF, Spring 1996). Men committed 476,937 rapes, robberies and burglaries, women 47,357 or a 10:1 ratio. From 1976-94, men committed 7 times as many murders as women, or 7:1. (Sourcebook '94, BJS '95, tb.4.9 and 3.22). Therefore, it may be statistically predictable that men are, by a 70:1 ratio (10:1 X 7:1), more likely to be on death row than are women. Women appear to be on death row in numbers that would be expected. However, one would expect that 5 women would have been executed since 1976, when only 1 has been executed.

D. THE COST OF LIFE WITHOUT PAROLE VS THE DEATH PENALTY

Many opponents present, as fact, that the cost of the death penalty is so expensive (at least \$2 million per case?), that we must choose life without parole ("LWOP") at a cost of \$1 million for 50 years. Predictably, these pronouncements may be entirely false. JFA estimates that LWOP cases will cost \$1.2 million - \$3.6 million more than equivalent death penalty cases.

Cost of Life Without Parole: Cases Equivalent To Death Penalty Cases

1. \$34,200/year for 50 years , at a 2% annual cost increase, plus \$75,000 for trial & appeals	= \$3.01 million
2. Same, except 3%	= \$4.04 million
3. Same, except 4%	= \$5.53 million

Cost of Death Penalty Cases

\$60,000/year for 6 years , at a 2% annual cost increase, plus \$1.5 million for trial & appeals	= \$1.88 million
Same, except 3%	= \$1.89 million
Same, except 4%	= \$1.91 million

There is no question that the up front costs of the death penalty are significantly higher than for equivalent LWOP cases. There also appears to be no question that, over time, equivalent LWOP cases are much more expensive - from \$1.2 to \$3.6 million - than death penalty cases. Opponents ludicrously claim that the death penalty costs, over time, 3-10 times more than LWOP.

The \$34,200 is conservative, if TIME Magazine's (2/7/94) research is accurate. TIME found that, nationwide, the average cell cost is \$24,000/yr. and the maximum security cell cost is \$75,000/yr. (as of 12/95). Opponents claim that LWOP should replace the DP. Therefore, any cost calculations should be based specifically on cell costs for criminals who have committed the exact same category of offense - in other words, cost comparisons are valid only if you compare the costs of DP-equivalent LWOP cases to the cost of DP cases. The \$34,200/yr. cell cost assumes that only 20% of the DP-equivalent LWOP cases would be in maximum security cost cells and that 80% of the DP-equivalent LWOP cases would be in average cost cells. A very conservative estimate. The \$60,000/yr., for those on death row, assumes that such cells will average a cost equal to 80% of the \$75,000/yr. for the most expensive maximum security cells. A very high estimate. Even though we are calculating a 75% greater cell cost for the DP than for equivalent LWOP cases, equivalent LWOP cases appear to be significantly more expensive, over time, than their DP counterparts. For years, opponents have improperly compared the cost of all LWOP cases to DP cases, when only the DP equivalent LWOP cases are relevant.

U.S. Vital Statistics Abstract, 1994 and Capital Punishment 1995, BJS 1996.

Annual cost increases are based upon: 1) historical increases in prison costs, including judicial decisions regarding prison conditions, and the national inflation rate; 2) medical costs, including the immense cost of geriatric care, associated with real LWOP sentences; 3) injury or death to the inmate by violence; 4) injury or death to others caused by the inmate (3 and 4 anticipate no DP and that prisoners, not fearing additional punishment, other than loss of privileges, may increase the likelihood of violence. One could make the same assumptions regarding those on death row. The difference is that death row inmates will average 6 years incarceration vs. 50 years projected for LWOP); 5) the risk and the perceived risk of escape; and 6) the justifiable lack of confidence by the populace in our legislators, governors, parole boards and judges, i.e. a violent inmate will be released upon society.

\$75,000 for trial and appeals cost, for DP-equivalent LWOP cases, assumes that the DP is not an option. We believe this cost estimate is very low. We have over-estimated that DP cases will cost twenty times more, on average, or \$1.5 million. Our exaggerated estimate states that the DP will have twenty times more investigation cost, defense and prosecution cost, including voir dire, court time, guilt/innocence stage, sentencing stage and appellate review time and cost than DP equivalent LWOP cases. Even though we have greatly exaggerated the cost of DP cases, DP cases still prove to be significantly less expensive, over time, than the DP equivalent LWOP cases.

6 years on death row, prior to execution, reflects the new habeas corpus reform laws, at both the state and federal levels. Some anti-death penalty groups speculate that such time may actually become only 4 years. If so, then DP cases would cost even that much less than the DP equivalent LWOP cases. However, the average time on death row, for those executed from 1973-1994, was 8 years (Capital Punishment 1994, BJS, 1995). Therefore, 6 years seems more likely. Even using the 8 year average, the DP equivalent LWOP cases are still \$1 million more expensive than their DP counterparts (\$2 million @ 2% annual increase).

One of the USA's largest death rows is in Texas, with 442 inmates, of which 229, or 52%, have been on death row over 6 years - 44, or 10%, have been on for over 15 years, 8 for over 20 years. 60 inmates, nationwide, have been on death row over 18 years. (as of 12/96).

NOTE - 10/19/00 - We received a post which located a flaw within our cost evaluation. The reader stated that we should "present value" all the costs of both a life sentence and the death penalty and that, if we do so, a life sentence is cheaper than a death sentence. Using the numbers in our analysis, such is a good point.

It should be noted that we were intentionally generous in minimizing life costs within our analysis. Please review we have not included

1) the recent studies on geriatric care at about \$70,000/year/prisoner in today's dollars , or

2) the recent explosion of Hepatitis C and AIDS within the prison system, or

- 3) the cost savings to jurisdictions based on plea bargains to maximum life sentences, which can only occur due solely to the presence of the death penalty. Such should accrue as a cost benefit of the death penalty, and
- 4) none of the above have been included in our cost analysis. All of which either increase the cost of a life sentence or accrue as a cost credit to the death penalty, and
- 5) And we have been extremely generous to the anti death penalty position with our numbers to begin with. I suspect that an average life without parole sentence costs closer to \$150,000-\$300,000, for all pre-trial, trial and appeals, as opposed to the \$75,000 used in our study.

Those omissions should not be considered a balancing, because accuracy is paramount. There is no cost study which fully evaluates all of those issues. We hope to update the data at some point with a more thorough review.

E. DEATH PENALTY PROCEDURES

There are at least 28 procedures necessary in reaching a death sentence. They are: (1) The crime must be one listed as a capital crime in the penal code; (2) a suspect must be identified and arrested; (3) Beginning with the Bill of Rights, the Miranda warnings and the exclusionary rules, U.S. criminal defendants and those convicted have, by far, the most extensive protections ever devised and implemented; (4) in Harris County (Houston), Texas a panel of district attorneys determines if the case merits the death penalty as prescribed by the Penal Code (See 12-19); (5) a grand jury must indict the suspect for capital murder; (6) the suspect is presumed innocent; (7) the prosecution must prove to the judge that the evidence, upon which the prosecution will rely, is admissible; (8) the defendant is assigned two attorneys. County funds are provided to defense counsel for investigation and trial; (9) it takes 3-12 weeks to select a jury; (10) trial is conducted; (11) the burden of proof is on the state; (12) all 12 jury members must find for guilt, beyond a reasonable doubt. In most cases, the jury knows nothing of the defendant's previous criminal acts, at this stage. If found guilty, then, the punishment phase of the trial begins; (13) the prosecution presents additional damning evidence against the murderer, i.e., other crimes, victims, victims' or survivors' testimony, police reports, etc; (14) In order to find for death, the issues to be resolved by the jury are {a}(14) did the defendant not only act willfully in causing the death, but act deliberately, as well, {b}(15) does the evidence show, beyond a reasonable doubt, that there is a likelihood that the defendant will be dangerous in the future, {c}(16) if there was provocation on the part of the victim, were the defendant's actions unreasonable in response to the provocations and {d}(17) is there something about the defendant that diminishes moral responsibility or in some way mitigates against the imposition of death for the defendant in this case, whereby, (18) the defense presents all mitigating circumstance, which may lessen the probability of the jury imposing death, i.e., family problems, substance abuse, age, no prior criminal record, mental disability, parental abuse, poverty, etc. Witnesses, such as family, friends, co-workers, etc., are presented to speak and offer the positive qualities of the defendant; (19) the jury must take into consideration those mitigating circumstances (Penry decision) and, if only 1 juror believes that the perpetrator deserves leniency because of any mitigating circumstances, then the jury cannot impose the death penalty; and (20) when the death sentence is imposed, the perpetrator receives an automatic appeal. (21& 22) the death row inmate is provided an attorney, or attorneys, to handle the direct appeal, at county expense, through both the state and federal courts; (23 & 24) the state pays attorneys for the inmate's habeas corpus appeals, at both the state and federal level; (25 & 26) death row inmates may be granted a hearing, in both state and federal court, to present post conviction claims of innocence. The burden of proof for these claims of innocence mirrors that used by the Federal courts; and (27 & 28) Convictions and sentences are subject to pardon or sentence reduction through the executive branch of government, at both the state level (Governor) and federal level (President).

These 28 procedures represent the broad categories of defendant and inmate protections. Within these 28 procedures, there are hundreds, if not thousands, of additional procedures and protections.

In some jurisdictions, the defense must prove mitigating circumstances by a preponderance of the evidence and the prosecution must prove aggravating circumstances beyond a reasonable doubt. This is a huge advantage for the defendant and a major disadvantage for the prosecution.

To punish with death, each one of the 12 jurors must agree with the prosecution in each of five specific areas (12, 14, (a)14, (b)15, (c)16, and (d)17 (with 18 & 19). A death sentence requires that the prosecution must prevail in 60 out of those 60 considerations, or 100%. To avoid death, the defendant must prevail in only 1 out of those 60 considerations, or 1.67%. If convicted and sentenced to death, the inmate may then begin an appeals process that could extend through 23 years, 60 appeals and over 200 individual judicial and executive reviews of the inmates claims. The average time on death row for those executed from 1977-1995 was 9 years. For the 56 executed in 1995, the average time on death row was 11 years, 2 months - a new record of longevity, surpassing the old record of 10 years, 2 months, set in 1994. 60 death row inmates have been on death row for over 18 years. (Capital Punishment 1994 & 1995, BJS 1995 & 1996). Could new longevity records of from 12-18 years on death row be set for those executed from 1996-2002, respectively? Yes. Even with the new federal and state laws? Easily.

HABEAS CORPUS - Opponents claim that with the new federal guidelines for appeals in capital cases, that nothing is left to protect the rights of the death row inmate. Predictably, such hysteria is unwarranted and untrue. The new federal appeals law, which affects the writ of habeas corpus, was upheld unanimously by the U.S. Supreme Court in 1996. This law established, nationally, higher minimum standards for defense counsel in capital cases and requires said counsel for all indigent capital defendants. Furthermore, with these new federal standards, there are still at least 17 levels of post conviction review available to the death row inmate; 6 state and 11 federal, comprised of 5 direct appeals, one at the state level and four at the federal level; 10 habeas corpus appeals, four at the state level and six at the federal level; 2 of those habeas appeals are for compelling post conviction claims of innocence, which are subject to a formal hearing, one at the state level and one at the federal level; and the 16th and 17th levels of appeal provide that the inmate's claims are subject to review for executive clemency or commutation, at either the state or federal level, and sometimes both. Similar appellate issues are often heard at every appellate level. There is no limit to the number of appellate issues which the inmate may raise on appeal. Generally, prosecutors and victim survivors have no right to appeal. Although this section deals specifically with Texas, the procedures are similar in all death penalty states and at the federal and military levels. The due process protections in capital cases are so overwhelming that inmates are six times more likely to get off death row by appeals than by execution. 37% of all death row cases are overturned on appeal. The American death penalty continues to have, by far, the greatest due process protections of any criminal sanction in the world.

Many seem to be unaware of the true meaning of the habeas corpus process. They may not know that the intent of the "Great Writ", established in pre-Magna Carta England, is to quickly facilitate the release of the innocent or those otherwise wrongfully held or convicted - a process that will finally be honored with these reforms. This is a very positive development, except for the guilty and for those who wish to abuse the habeas corpus process by delaying justice with frivolous, repetitive and prolonged appeals. It is a bitter irony that it was just such intentional delays of justice that the "Great Writ" was created to abolish. It was just such abuses that caused many of the states and the federal government to enact new habeas corpus reforms. Indeed, it was opponents of the death penalty who finally guaranteed passage of these long delayed reforms. Opponents had begun to challenge the long stays on death row as unconstitutional, claiming that such delays were, by themselves, "cruel and unusual punishment", a violation of the eighth amendment. Although all such cynical and humorous claims were rejected by U.S. courts - there was overwhelming evidence that inmates and their attorneys were responsible for such delays - such claims did provide the final push necessary to finally pass these reforms through the U.S. Congress, thus respecting the claims of opponents, inmates and their attorneys through legislation.

For those who find themselves hysterical over these habeas corpus reform efforts, who believe that speeding up the appeals process will threaten the lives of those convicted and innocent, please contemplate the following question: What innocent or otherwise improperly convicted inmate would wish to linger a bit longer on death row as their attorney, snail-like, labored to prolong their wrongful stay on death row with a series of delayed and frivolous appeals?

The American Death Penalty is, overwhelmingly, the least arbitrary and the least capricious of all the world's legal sanctions for violent crime.

JUSTICE FOR ALL is a criminal justice reform organization dedicated to protecting the civil and human rights of all citizens from violent crime. Through education and legislation we shall take all necessary measures to reduce

the human suffering caused by violent criminals and a failed criminal justice system. Founded in Houston, Texas in 1993, JFA has membership throughout the U.S.A. Please inquire about membership and/or starting a chapter in your area. Visit our site on the web: <http://www.jfa.net>

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F. CHRISTIANITY AND THE DEATH PENALTY

NOTE: Although not relevant to the legal application of the death penalty in the United States, religious issues are a significant thread within the moral debate. Biblical text is most relevant within a theocracy or a secular government which has laws that are consistent with biblical text. The United States does not, of course, fall within either category. This section is included only to counter the false claim that there is no New Testament support for capital punishment.

- 1) Virtually all religious scholars agree that the correctly translated commandment "Thou shalt not murder" is a prohibition against individual cases of murder. There is no biblical prohibition against the government imposition of the death penalty in deserving cases. Indeed, the government imposition of capital punishment is required for deliberate murder. (Dr. Charles Ryrie, *Biblical Answers to Contemporary Issues & The Ryrie Study Bible*, Exodus 20:13).
- 2) "... pronouncements about divine behavior (in the Hebrew Bible) correlated in the judicial context to attitudes toward death as a proper punishment. Quite clearly, the New Testament carries on the earlier mentality." As Jesus described in the Sermon on the Mount, "Obedience will be rewarded with life; disobedience will be punished with destruction. A God who rewards with life and punishes with death is One whose laws provide for death as a judicial punishment." Dr. Baruch Levine, "Capital Punishment," p 31, *What the Bible Really Says*, ed. Smith & Hoffman, 1993.
- 3) "If no crime deserves the death penalty, then it is hard to see why it was fitting that Christ be put to death for our sins and crucified among thieves. St. Thomas Aquinas quotes a gloss of St. Jerome on Matthew 27: 'As Christ became accursed of the cross for us, for our salvation He was crucified as a guilty one among the guilty.' That Christ be put to death as a guilty person, presupposes that death is a fitting punishment for those who are guilty." Prof. Michael Pakaluk, *The Death Penalty: An Opposing Viewpoints Series Book*, Greenhaven Press, (hereafter TDP:OVS), 1991
- 4) "The same divine law which forbids the killing of a human being allows certain exceptions. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment 'Thou shalt not kill', for the representative of the State's authority to put criminals to death, according to the Law or the rule of rational justice." St. Augustine, *The City of God*, Book 1, Chapter 21. See F.16
- 5) "The rejection of capital punishment is not to be dignified as a 'higher Christian way' that enthrones the ethics of Jesus. The argument that Jesus as the incarnation of divine love cancels the appropriateness of capital punishment in the New Testament era has little to commend it. Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative." Dr. Carl F. H. Henry, *Twilight Of A Great Civilization*, Crossway, 1988, p 70,72. Father Pierre Lachance, O.P. (St. Anne Parish, Fall River, Mass.) fully concurs: "There is no question but that capital punishment was not only allowed but mandated in the Old Testament. In the New Law (New Testament) (St.) Paul recognizes the legitimacy of capital punishment . . . 'It is not without purpose that the ruler carries the sword. He is God's servant, to inflict his avenging wrath upon the wrongdoer Romans 13:4.' " (TDP:OVS, 1986, pg. 84)
- 6) "It is because humans are created in the image of God that capital punishment for premeditated murder was a perpetual obligation. The full range of biblical data weighs in its favor. This is the one crime in the Bible for

which no restitution was possible (Numbers 35:31,33). The Noahic covenant recorded in Genesis 9 ("Whoever sheds the blood of man, by man shall his blood be shed. "Gen 9:6) antedates Israel and the Mosaic code; it transcends Old Testament Law, per se, and mirrors ethical legislation that is binding for all cultures and eras. The sanctity of human life is rooted in the universal creation ethic and thus retains its force in society. The Christian community is called upon to articulate standards of biblical justice, even when this may be unpopular. Capital justice is part of that non-negotiable standard. Society should execute capital offenders to balance the scales of moral judgement." From "Capital Punishment: A Personal Statement", by Charles W. Colson., a former opponent. He is spiritual advisor and friend to numerous death row inmates and the Founder of Prison Fellowship, the largest Christian ministry serving incarcerated prisoners. Ph.703-478-0100.

7) St. Thomas Aquinas finds all biblical interpretations against executions "frivolous", citing Exodus 22:18, "wrongdoers thou shalt not suffer to live". Unequivocally, he states, "The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the peace of the state." (Summa Contra Gentiles, III, 146.)

8) "God, Himself, instituted the death penalty (Genesis 9:6) and Christ regarded capital punishment as a just penalty for murder (Matthew 26:52). God gave to government the legitimate authority to use capital punishment to restrain murder and to punish murderers. Not to inflict the death penalty is a flagrant disregard for God's divine Law which recognizes the dignity of human life as a product of God's creation. Life is sacred, and that is why God instituted the death penalty. Consequently, whoever takes innocent human life forfeits his own right to live." Protestant scholar Rev. Reuben Hahn (Mt. Prospect, Ill.), Human Events, 3/2/85.

9) "The fact that the evil, as long as they live, can be corrected from their errors does not prohibit the fact that they may be justly executed, for the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement. They also have at that critical point of death the opportunity to be converted to God through repentance. And if they are so stubborn that even at the point of death their heart does not draw back from evil, it is possible to make a highly probable judgement that they would never come away from evil to the right use of their powers." St. Thomas Aquinas, Summa Contra Gentiles, Book III, 146.

10) The movie Dead Man Walking reveals a perfect example of how just punishment and redemption can work together. Had rapist/murderer Matthew Poncelet not been properly sentenced to death by the civil authority, he would not have met Sister Prejean, he would not have received spiritual instruction, he would not have taken responsibility for his crimes and he would not have reconciled with God. Had Poncelet never been caught or had he only been given a prison sentence, his character makes it VERY clear that those elements would not have come together. Indeed, for the entire film and up until those last moments, prior to his execution, Poncelet was not fully truthful with Sister Prejean. His lying and manipulative nature was fully exposed at that crucial time. It was not at all surprising, then, that it was just prior to his execution that all of the spiritual elements may have come together for his salvation. It was now, or never. Truly, just as St. Aquinas predicted (F.9.), it was his pending execution which finally led to his repentance. For Christians, the most crucial concerns of Dead Man Walking must be and are redemption and eternal salvation. And, for that reason, it may well be, for Christians, the most important pro-death penalty movie ever made.

A real life example of this may be the case of Dennis Gentry, executed April 16, 1997, for the highly premeditated murder of his friend Jimmy Don Ham. During his final statement, Gentry said, "I'd like to thank the Lord for the past 14 years (on death row) to grow as a man and mature enough to accept what's happening here tonight. To my family, I'm happy. I'm going home to Jesus." As the lethal drugs began to flow, Gentry cried out, "Sweet Jesus, here I come. Take me home. I'm going that way to see the Lord." (Michael Gracyk, Associated Press, Houston Chronicle, 4/17/97). We cannot know if Gentry or the fictitious Poncelet or the two real murderers from the DMW book really did repent and receive salvation. But, we do know that St. Aquinas advises us that murderers should not be given the benefit of the doubt. We should err on the side of caution and not give murderers the opportunity to harm again. Indeed, as Dr. W.H. Baker confirms in his On Capital Punishment (Moody Press, 1985), biblical text finds that it is a violation of God's mandate not to execute premeditated murderers - and nowhere does the text contradict this finding.

11) In his 1995 encyclical, The Gospel of Life (Evangelium Vitae), Pope John Paul II finds that the only time executions can be justified is when they are required "to defend society" and that "as a result of steady improvements . . . in the penal system that such cases are very rare if not practically non-existent." The Pope is in error. Such cases are not at all rare. In this context, "to defend society" means that the execution of the

murderer must save future lives. Murderers murder again, often time and time again - in prison, after escape, after release, and, of course, after we fail to capture or incarcerate them. In fact, had the Pope correctly evaluated the penal system, using the "defending society" standard, he would require an increase in executions. We know that some criminals don't commit murder because of their fear of execution. The incapacitation effect, the individual deterrent effect and the general deterrent effect support that the death penalty does indeed "defend society". Executions save lives. Therefore, expanding the use of executions is required by a "defending society" standard. However, even though Romans 13:4 and additional writings reveal a "defending society" consideration, such references pale in comparison to the mandate that execution is the required punishment for and atonement for murder, regardless of any consideration "to defend society." And the writings of Saint Thomas Aquinas and Saint Augustine concur. Therefore, atonement, proper punishment and "defending society" each require an increase in executions. Furthermore, one of the most respected of all popes, Saint Pius V, reaffirmed, in the Catechism of the Council of Trent (1566), that executions were acts of "paramount obedience to the (fifth/sixth) commandment." What biblical and theological teachings, developed from 1566 through 1997, provide that the standard for executions should evolve from "paramount obedience" to God's eternal law to a civil standard reflecting "steady improvements . . . in the penal system?"

Furthermore, if the "defending society" standard is accepted, then the moral concept of justice becomes irrelevant. Capital punishment can be used only as a vehicle to preventing future crimes. The moral/biblical rational - that capital punishment is the just punishment for capital murder - is no longer relevant to the sin/crime of murder. The biblical standards of atonement, expiation, and justice have, necessarily, been thrown away, if "defending society" is the standard. Capital punishment no longer has any connection to the harm done or to the imbalance to be addressed. In fact, the injury suffered by the crime of murder isn't even relevant. Punishment is to be justified solely upon the ability of that punishment to prevent future murders. Therefore, when considering executions in regard to capital murder cases, a "defending society" standard renders justice irrelevant. With minor revisions, the Evangelium Vitae was the basis for a 1997 amendment to the Universal Catechism of 1992.

12) Christians who speak out against capital punishment in deserving cases " . . . tend to subordinate the justice of God to the love of God. . . . Peter, by cutting off Malchu's ear, . . . was most likely trying to kill the soldier (John 18:10)", prompting " . . . Christ's statement that those who kill by the sword are subject to die by the sword (Matthew 26:51-52)." This " implicitly recognizes the government's right to exercise the death penalty." Dr. Carl F.H. Henry, "A Matter of Life and Death", p 52 Christianity Today, 8/4/95.

13) "When it is a question of the execution of a man condemned to death it is then reserved to the public power to deprive the condemned of the benefit of life, in expiation of his fault, when already, by his fault, he has dispossessed himself of the right to live." Pope Pius XII, 9/14/52.

14) Some speculate that God's mandate for capital punishment is weak, because the requirement for two witnesses in such cases (Numbers 35:30; Deuteronomy 17:6) drastically reduces the application of that sanction. Such speculation is unwarranted. By wrongly isolating the Hebrew ' d, "witness", from its broad biblical context, some interpreters have falsely concluded that two or more "eye" witnesses are required in capital cases and in all criminal cases subject to court judgement (Deuteronomy 19:5). Did God want nearly all criminals, including murderers, to get off, scot-free, if " . . . (they) had not taken the prudent measure of committing (their) crime where two people did not happen to be watching him?" The biblical record rejects any such conclusion.

The word "witness", ' d, has broad meaning, including, anyone with (1) " . . . pertinent knowledge concerning the crime, even though he had not actually seen it." (Lev 5:1), such as motive, opportunity, accomplices, overheard confessions, wiretaps, etc.; (2) physical evidence can also bear witness, also ' d (Ex 22:13), such as bloody clothing, murder weapon, DNA, fingerprints, etc.; (3) written documents may serve as evidence and witness (' d or ' dah, Jos 25:25-27), such as a confession, documents showing motive or implication, etc.; (4) monuments and memorial stones, such as gal-' d in Gen 31:46-49, can also bear witness. Indeed, "there is no contravention of biblical principles in allowing such testimony, even though only one actual witness may be found, or none at all." There is no biblical requirement for two, or any, "eye" witnesses in criminal cases. (Dr. Gleason L. Archer, Encyclopedia of Biblical Difficulties, Zondervan Pub., 143-145, 1982, also see the exceptional writings on John 8:11, 371-373, therein.) According to actual biblical usage, the witness and evidence requirements in capital cases in the U.S. meet or exceed all biblical standards.

15) Paul, in his hearing before Festus, states: "if then I am a wrong doer, and have committed anything worthy of

death, I do not refuse to die." Acts 25:11. "Very clearly this constitutes an acknowledgment on the part of the inspired apostle that the state continued to have the power of life and death in the administration of justice, just as it did from the days of Noah (Gen 9:6)". Ibid., F.14., p. 342.

16) (A) "If you do what is evil, be afraid; for [the civil government] does not bear the sword for nothing; for it is the minister of God, an avenger who brings wrath upon those who practice evil." Romans 13:4. "God has given the state the power of life and death over its subjects in order to maintain order." Dr. Charles Ryrie, *The Ryrie Study Bible* (NAS), 1978. (B) Romans 13:4 does not " . . . directly refer to the infliction of the death penalty; but in the context of first century Rome and against the Old Testament background (Genesis 9:4-6), Paul would clearly include the death penalty in the state's panalogy of punishments for wrongdoing." Douglas Moo, *The Epistle To the Romans*, Erdmans, 1996, pg. 802, footnote 54. (C) "Since the word sword (*machaira*) has occurred earlier in the letter to indicate death (Romans 8:35) and since it was used of execution (Acts 12:2; Revelation 13:10), it seems clear that Paul means it here as a symbol of capital punishment." Stott, John, *ROMANS*, InterVarsity Press, 342, 1994. (D) Specifically, "this word for sword indicates one that was shaped like a sabre and was carried by magistrates to show that they had the power to punish, even to death." *Ryrie Study Bible - Expanded Edition*, NAS, Moody Press, 1995, pg. 1810, Romans 13:4, footnote 13:4. (E) "(Jesus) warned Peter that to 'die by the sword' is the punishment proper for those who take human life (Matthew 25:26); it should be noted that the sword was meant for execution, not for life imprisonment." Henry, *ibid* F. 5, p 71. Also review F. 4, 5 and 25.

17) It is not uncommon for persons of faith to create a god in their own image, to give to that god their values, instead of accepting those values which are inherent to the deity. For example, celebrated opponent Sister Helen Prejean (*Dead Man Walking*) states, in reference to the death penalty, that "I couldn't worship a god who is less compassionate than I am." (*Progressive*, 1/96; bold "I", JFA). She has, thereby, established her standard of compassion as the basis for God's being deserving of her devotion. If God's level of compassion does not rise to the level of her own, God couldn't receive her worship. Director Tim Robbins (*Death Man Walking*) follows that same path: "(I) don't believe in that kind of (g)od (that would support capital punishment and, therefore, would be the kind of god who tortures people into their redemption)." (*"Opposing The Death Penalty"*, *AMERICA*, 11/9/96, p 12). Robbins, hereby, establishes his standard for his God's deserving of his belief. God's standards do not seem to be relevant. His sophomoric comparison of capital punishment and torture is typical of the ignorance in this debate and such comments reflect no biblical relevancy. Perhaps they should review Matthew 5:17-22 and 15:1-9. Be cautious, for as the ancient rabbis warned, "Do not seek to be more righteous than your creator." (*Ecclesiastes Rabbah* 7.33)

18) One of the most respected of all Quaker biblical scholars is Dr. Gervas A. Carey. A Professor of Bible and past President of George Fox College, Dr. Carey wrote a landmark essay on the death penalty entitled "A Bible Study". Here is a synopsis of his analysis: " . . . the decree of Genesis 9:5-6 is equally enduring and cannot be separated from the other pledges and instructions of its immediate context, Genesis 8:20-9:17; . . . that is true unless specific Biblical authority can be cited for the deletion, of which there appears to be none. It seems strange that any opponents of capital punishment who professes to recognize the authority of the Bible either overlook or disregard the divine decree in this covenant with Noah; . . . capital punishment should be recognized . . . as the divinely instituted penalty for murder; The basis of this decree . . . is as enduring as God; . . . murder not only deprives a man of a portion of his earthly life . . . it is a further sin against him as a creature made in the image of God and against God Himself whose image the murderer does not respect." (p. 111-113) Carey agrees with Saints Augustine and Aquinas, that executions represent mercy to the wrongdoer: " . . . a secondary measure of the love of God may be said to appear. For capital punishment provides the murderer with incentive to repentance which the ordinary man does not have, that is a definite date on which he is to meet his God. It is as if God thus providentially granted him a special inducement to repentance out of consideration of the enormity of his crime . . . the law grants to the condemned an opportunity which he did not grant to his victim, the opportunity to prepare to meet his God. Even divine justice here may be said to be tempered with mercy." (p. 116). *Essays on the Death Penalty*, T. Robert Ingram, ed., St. Thomas Press, Houston, 1963, 1992.

19) "The just use of (executions), far from involving the crime of murder, is an act of paramount obedience to this (Fifth) Commandment which prohibits murder." Pope (and Saint) Pius V, "The Roman Catechism of the Council of Trent" (1566). Referring to that Catechism, Catholic scholar Father James Reilly, M.S. notes that "From the time of St. Paul until today this has always been the official teaching of the Catholic Church and only the Holy See or a General Counsel has the authority to change it. The curious thing is that those Catholics who have repeatedly condemned capital punishment and have, often, apparently at least, declared it immoral, never refer

to that passage from the Roman Catechism. It may be that they are unaware of it, but such ignorance is, in my opinion, inexcusable." (Haven Bradford Gow, "Religious Views Support The Death Penalty", *The Death Penalty: Opposing Viewpoints*, Greenhaven Press, 1986, p. 82).

20) "You have heard the ancients were told, 'YOU SHALL NOT COMMIT MURDER' and 'Whoever commits murder shall be liable to the court'. But I say to you that everyone who is angry with his brother shall be guilty before the court; and whoever shall say to his brother, 'Raca', shall be guilty before the supreme court and whoever shall say, 'You fool', shall be guilty enough to go into fiery hell." Jesus, Matthew 5:17-22. Should any explanation be necessary, Jesus is saying that even as execution is the required punishment for murderers, as per the Old Testament, He tells us that those who speak ill of others and have hatred in their heart shall suffer in hell. Not only does Jesus never speak out against the civil authorities just use of execution for murder, He prescribes a much more serious, eternal punishment for those who hate and speak ill of others. And what price does God exact for any and all sin? Death. (Romans 5:12-14)

21) "It is abundantly clear that the Bible depicts murder as a capital crime for which death is considered the appropriate punishment, and one is hard pressed to find a biblical 'proof text' in either the Hebrew Testament or the New Testament which unequivocally refutes this. Even Jesus' admonition 'Let him without sin cast the first stone,' when He was asked the appropriate punishment for an adulteress (John 8:7) - the Mosaic Law prescribed death - should be read in its proper context. This passage is an 'entrapment' story, which sought to show Jesus' wisdom in besting His adversaries. It is not an ethical pronouncement about capital punishment." Sister Helen Prejean, *Dead Man Walking*. The sister's analysis is consistent with virtually all theological scholarship. From here, the sister states that "... more and more I find myself steering away from such futile discussions (of Biblical text). Instead, I try to articulate what I personally believe..." As the long term Chairperson of the National Coalition to Abolish the Death Penalty, the sister has never shied away from any argument, futile or otherwise, which opposed the death penalty. She has abandoned biblical text for only one reason: the text conflicts with her personal beliefs.

It is common for persons to take biblical text out of context and to, thereby, pervert its meaning. Indeed, Sister Prejean rightly cautions: "Many people sift through the Scriptures and select truth according to their own templates." (*Progressive*, 1/96). Sadly, Sister Prejean appears to do much worse. The sister now uses that very same biblical text "Let the one who is without sin cast the first stone" as proof of Jesus' "unequivocal" rejection of capital punishment as "revenge and unholy retribution"! This appears to be a disgraceful and intentional perversion of biblical text. (see Sister Prejean's 12/12/96 fundraising letter on behalf of the Saga Of Shame book project for Quixote Center/Equal Justice USA).

22) Pontius Pilate said to Jesus, "You do not speak to me? Do You not know that I have authority to release You, and I have authority to crucify You?" Jesus answered, "You would have no authority over Me, unless it had been given you from above." (John 19:10-11). "Jesus reminds Pilate that the implementation of the death penalty is a divinely entrusted responsibility that is to be justly implemented." Prof. Carl F.H. Henry, 45th Annual N.A.E. Convention, "Capital Punishment and The Bible". Jesus confirms that the civil authority has the lawful right to execute Jesus, and others, and that this right has been given to that authority by God.

23) Some churches are now espousing a pro-life continuum, a philosophy whereby the taking of any life, under any circumstances, must be condemned - such as the taking of lives through war, self defense, suicide, abortion and the death penalty. This is an interesting social philosophy which directly conflicts with the Word of God. Catholic biblical scholar Father Richard Roach, S.J. of Marquette and Columbia Universities argues that it is not a contradiction for religious people to oppose abortion and ... to support capital punishment. "Abortion is absolutely prohibited. It is always evil. No one can ever abort a 'guilty' baby, so the act can never be right. This is not the case, however, with either capital punishment or a just and defensive war. It is only murder, along with its subdivisions suicide and abortion, which God's law absolutely prohibits. The upshot of all this is that trying to put abortion, capital punishment and war in one package makes chaos of Catholic morals and can lead one to misinterpret God's Law..." Princeton. University scholar Dr. Paul Ramsey fully concurs: "abortion and capital punishment are two different questions. There is no inconsistency between moral disapproval of unnecessarily killing the innocent and the judicial execution of the guilty." (Haven Bradford Gow, "Religious Views Support The Death Penalty", *The Death Penalty: Opposing Viewpoints*, Greenhaven Press, 1986, p. 81- 82 & 84).

24) "If a man is a danger to the community, threatening it with disintegration by some wrongdoing of his, then his

execution for the healing and preservation of the common good is to be commended. Only the public authority, not private persons, may licitly execute malefactors by public judgement. Men shall be sentenced to death for crimes of irreparable harm or which are particularly perverted." St. Thomas Aquinas, *Summa Theologica*, 11; 65-2; 66-6.

25) "If by arming the magistrate, the Lord has also committed him the use of the sword, then, whenever he punishes the guilty by death, he is obeying God's commands by exercising His vengeance. Those, therefore, who consider it is wrong to shed the blood of the guilty are contending against God." John Calvin, "The Epistle of Paul the Apostle to the Romans and to the Thessalonians", in *Calvin's Commentaries*, trans. Ross McKenzie (Grand Rapids: Eerdmans, 1960) p.283. see D.16

26) "The opposition to capital punishment is not based on Scripture but on a vague philosophical idea that the taking of a life is wrong, under every circumstance, and fails to distinguish adequately between killing and murder, between punishment and crime. The argument that capital punishment rules out the possibility of repentance for crime is unrealistic. If a wanton killer does not repent when the sentence of death is upon him, he certainly will not repent if he has 20-50 years of life imprisonment. The sentence of death on a killer is more redemptive than the tendency to excuse his crime as no worse than grand larceny. Mercy always infers a tacit recognition that justice and rightness are to be expected. The Holy God does not show mercy contrary to his righteousness but in harmony with it. That is why the awful Cross was necessary and a righteous Christ had to hang on it. That is why God's redemption is always conditioned by one's heart attitude. The Church and individual Christians should be active in their witness to the Gospel of love and forgiveness; but meanwhile wherever and whenever God's love and mercy are rejected, as in crime, natural law and order must prevail, not as extraneous to redemption but as part of the whole scope of God's dealings with man. No matter how often a jury recommends mercy, the law of capital punishment must stand as the silent but powerful witness to the sacredness of God-given life. Active justice must be administered when the sacredness of life is violated. Life is sacred, and he who violates the sacredness of life through murder must pay the supreme penalty. It is significant that when Jesus voluntarily went the way of the Cross He chose the capital punishment of His day as His instrument to save the world. And when He gave redemption to the repentant thief He did not save Him from capital punishment but gave him paradise instead. We see again that mercy and forgiveness are something different from being excused from wrongdoing. Synopsis of Dr. Jacob J. Vellenga's "Is Capital Punishment Wrong", p. 63-72, *Essays on the Death Penalty*, ed. T. Robert Ingram, Houston, 1963, 1992. Dr. Vellenga is former Associate Executive of the United Presbyterian Church (USA).

27) The leadership councils of some Christian denominations in the U.S. have released statements in opposition to the death penalty. These statements reflect social positions that have questionable biblical foundation and, often, they reflect positions which selectively only discuss the mercy of God and improperly avoid the justice of God. For example, some believe that it would be hypocritical for Christians to support capital punishment, because that would suggest that some peoples' sins are not forgivable. They argue that capital punishment conflicts with Jesus' teachings - that, if we are not willing to forgive, then we place ourselves outside of God's forgiveness. Such pronouncements are hardly convincing and are biblically inaccurate. All death row inmates, no matter how vile and numerous their misdeeds, are subject to the forgiveness of men and of God and, more importantly, they are subject to redemption and eternal salvation. Indeed, God compels us, individually, to forgive those who have harmed us. This, in no way, conflicts with the biblical mandate that the government authority impose the death penalty in deserving cases. Social positions cannot and do not replace biblical instruction. Furthermore, the murder victim is hardly capable of forgiving the murderer. The biblical requirement to forgive those who injure us is an individual requirement. Therefore, no one, other than God, has the moral authority to forgive the crime of murder.

28) "While the thief on the cross found pardon in the sight of God - 'Today you will be with Me in Paradise' - that pardon did not extend to eliminating the consequences of his crime - 'We are being justly punished, for we are receiving what we deserve for our deeds.' (Luke 23:39-43)". Neither God nor Jesus nor the Holy Spirit nor the prophets nor the apostles ever spoke out against the civil authorities use of executions in deserving cases - not even at the very time of Jesus' own execution when He pardoned the sins of the thief, who was being crucified along side Him. Indeed, quite the opposite. Their biblical support for capital punishment is consistent and overwhelming. Furthermore, Jesus never confuses the requirements of civil justice with those of either eternal justice or personal relations. Charles Colson accurately recognizes this fact in stating that "it leads to a perversion of legal justice to confuse the sphere of private relations with that of civil law." All quotations from

Charles Colson's "Capital Punishment: A Personal Statement". See D.6. Continuing this thread, Protestant scholar and journalist Rev. G. Aiken Taylor states, "Most Christians tend to confuse the Christian personal ethic with the requirements of social order. In other words, we tend to apply what the Bible teaches us about how we - personally - should behave toward our neighbors with what the Bible teaches about how to preserve order in society. And there is a big difference. Capital punishment is specifically enjoined in the Bible. 'Who ever sheddeth man's blood, by man shall his blood be shed' (Genesis 9-6). This command is fully agreeable to the Sixth Commandment, 'Thou shalt not kill,' (Exodus 20:13), because the two appear in the same context. Exactly 25 verses after saying 'Thou shalt not kill', the Law says, 'He that smiteth a man so that he may die, shall be surely put to death' (Ex 21:12)." See also Leviticus 24:17 and Numbers 35:30-31. (TDP:OVS, pg. 84, 1986) Biblical teachings regarding personal conduct, civil government and eternal judgement and relations are often taken out of context, thereby replacing one duty or instruction improperly with another.

29) In addition to the required punishment for murder and the deterrence standards, both Saint Augustine and Saint Thomas Aquinas find that executing murderers is also an act of charity and mercy. Saint Augustine confirms that "... inflicting capital punishment ... protects those who are undergoing capital punishment from the harm they may suffer ... through increased sinning which might continue if their life went on." (On the Lord's Sermon, 1.20.63-64.) Saint Thomas Aquinas finds that "... the death inflicted by the judge profits the sinner, if he be converted, unto the expiation of his crime; and, if he be not converted, it profits so as to put an end to the sin, because the sinner is thus deprived of the power to sin anymore." (Summa Theologica, II-II, 25, 6 ad 2.)

30) God, through the power and justice of the Holy Spirit, executed both Ananias and his wife, Saphira. Their crime? Lying to the Holy Spirit - to God - through Peter. Acts 5:1-11. By executing two such devoted Christians for lying to Him, does the Holy Spirit show confirmation of His support for His divinely instituted civil punishment of execution for premeditated murder or does it show His rejection of capital punishment? And read all of Revelation.

31) There are two passages in Luke which speak directly to Jesus' position on capital punishment. In 20:14-16, Jesus states: "He will come and kill those tenants and give the vineyard to others". Jesus is stating that the proper punishment for murder is death. In 19:27, "Christ pronounced this judgement on those who rebelled against their king: 'But these enemies of mine, who did not want me to reign over them, bring them here, and slay them in my presence' (NASB). Thus, it is very clear that neither Christ nor His apostles intended to abrogate the God-given responsibility of the government (under Old Testament law) to protect its citizens and enforce justice by capital punishment." *ibid*, D.14., pg. 342. In the 19:27 parable "their king" is Jesus.

32) The Bible clearly asserts, from beginning to end, without any reservation, that righteous judgement includes the execution of a murderer. In the case of murder, the biblical materials offer the clearest and most sustained justification for the death penalty. The purpose of capital punishment is justice - deterrence is irrelevant. A person who takes a human life, without proper sanction, forfeits any right to life - no alternative is allowed and the community must not be swayed by values to the contrary.

Listen carefully to the Bible as the Word of God rather than seek to improve upon it by means of human values. However meritorious mercy may be, however abundantly evident it may be in God's own dealings, murder was an offense for which mercy and pity were not allowed and for which monetary compensation was strictly forbidden. The sentence is set by God's torah and a judge cannot have discretion in this matter. Murder is something utterly on its own, nothing can be compared to it.

It should not be overlooked, in seeking to discover "the mind of Jesus Christ" on the issue of murder and its punishments, that He goes beyond torah to the statement that even verbal abuse makes one deserving of "the hell of fire". Far from releasing believers from prior law, Jesus was a "hard liner" who made things even tougher, stating that He has come not "to abolish the law and the prophets ... but to fulfill them.", offering even stronger interpretations than in the original (Matthew 5:17-22). Indeed, Jesus admonishes the Pharisees not to misuse torah for their own ends, but to honor God and torah. And of all the text in the Bible, which one does Jesus select to emphasize that crucial point? "HE WHO SPEAKS EVIL OF FATHER OR MOTHER, LET HIM BE PUT TO DEATH" (Matthew 15:1-9).

All interpretations, contrary to the biblical support of capital punishment, are false. Interpreters ought to listen to the Bible's own agenda, rather than to squeeze from it implications for their own agenda. As the ancient

rabbis taught, "Do not seek to be more righteous than your Creator." (Ecclesiastes Rabbah 7.33.). Synopsis of Professor Lloyd R. Bailey's book *Capital Punishment: What the Bible Says*, Abingdon Press, 1987. This is the definitive work on this subject. It is mandatory reading for those who wish to undertake a thorough and accurate look at this often misused and misunderstood area of concern and debate.

Conclusion: Throughout the Hebrew Testament and the New Testament, there is overwhelming biblical support for the divinely instituted punishment of death in cases of murder, such punishment to be carried out by the governing authority. There appears to be no biblical text which withdraws or condemns the punishment or that authority. Indeed, all evidence is quite to the contrary.

Opponents and advocates of capital punishment often make fundamental errors in citing biblical text. Those errors are usually found within the following categories:

(1) Confusing the obligations of individuals with those of the government. Example: Matthew 5:38-39: "You have heard that it was said, 'an eye for an eye, and a tooth for a tooth.' But I say to you, do not resist who is evil; but whoever slaps you on your right cheek, turn to him the other also." Strangely, opponents cite this as proof of Jesus' abandonment of capital punishment. If one were to assume that this text referenced the actions of the governing authority and not individual obligations, then one would clearly find that government could not enforce any law which sought to protect the lives and property of its law abiding citizens. There is no reference to capital punishment in the text. Therefore, all wrongdoers, be that robbers, rapists or murderers could act repeatedly, with impunity, if the text was an obligation on the governing authority. This text is directed at individuals and has no application to the governing authority or its right and duty to execute. (Carey, *ibid* F.18, pg. 122)

(2) Isolating specific biblical text from the broader context of the discussion. Example: Ezekiel 33:11: "As I live, says the Lord God, I have no pleasure in the death of the wicked, but that the wicked turn from his way and live; turn back, turn back your evil ways; for why will you die, O house of Israel?" Let's review Dr. Bailey's analysis: "To some readers, that may seem clear enough! God not only takes no "pleasure" in the death (execution?) of the wicked (criminal?), but prefers that they "turn back" (be rehabilitated?). Such understanding might indeed be justified if one could read the Bible atomistically, that is, one verse at a time, with the understanding that the verse has a self contained eternal truth. However, if the prophet is speaking to a specific audience about a particular problem, and if his response covers several verses (or even a chapter), then the modern interpreter must hear him out and look for the central idea. That is, what a verse says may not be what the context (and thus the prophet) means. . . .the words are addressed to the 'house of Israel' (specifically the Judean exiles of Babylonia), in response to their lament. (And) Who are the wicked? The exiles whose betrayal of the covenant has led to exile. What is meant by their "death"? Both their political situation ("we waste away") and their dwindling faith in the ancient concept of election. God takes no "pleasure" in the death of the wicked (i.e., does not see it as necessary that the exiles have this attitude and forever remain in Babylonia). The Deity desires repentance, change of priorities, renewal of ancient values, life as it was intended by this community {"turn back"} . . . and return to the promised land. Thus, the text is not concerned with the fate of anyone who has been sentenced to death by the judiciary (or even per se with individuals who face death), and it does not therefore suggest what the religious persons response should be in that case." Bailey, *ibid* F.31,pg. 42-43. "It is a faulty exegesis to take a verse of Scripture out of context and interpret it without regard to its qualifying words."See Vallenga, *ibid* F.26, pg. 65.

(3) Believing that Christ abandoned the Law of the Hebrew Testament and instituted a new ethic in the New Testament, based solely on mercy. There are 20 chapters, within the 28 chapters of Matthew, which discuss destruction, hell, unquenchable fire, and/or differing forms of punishment and exclusion by God (see Jesus' words in Matthew 5:22, 29-30; 8:12; 11:23-24; 12:30-32; 13:41-42, 49-50; 18:8-9; 22:2-14; 23:33, 25:40-46) and/or honor the Law of the Hebrew Testament (see specific references Matthew 5 and 15). "For this you know with certainty, that no immoral or impure person has an inheritance in the kingdom of Christ and God." Ephesians 5:5. "When the Lord Jesus shall be revealed from Heaven with His mighty angels in flaming fire, dealing out retribution to those who do not know God and to those who do not obey the gospel of our Lord Jesus. And these will pay the penalty of eternal destruction, away from the presence of the Lord and from the glory of His power." 2 Thessalonians 1:7b-9. And so it is throughout the New Testament. See also Mark 3:29; Luke 13:24-28; John 5:24-29, 15:6; 2 Peter 2:4-9; Jude 1:5-15; Revelation 13:10. NAS, 1978

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